

## Message Text

PAGE 01 STATE 205201  
ORIGIN NEA-10

INFO OCT-01 EUR-12 ISO-00 EB-08 COME-00 L-03 TRSE-00  
SIG-03 XMB-02 ITC-01 OPIC-03 CIAE-00 INR-10  
NSAE-00 SS-15 SP-02 NSC-05 OMB-01 PA-01 ICA-11  
/088 R

DRAFTED BY NEA/RA:REDAY:KMS  
APPROVED BY NEA/RA - WDOZIER  
EUR/NE - DWOOFLEY (SUBS)  
EB/IFD/BP - TSCHLENKER  
COMM/ITA - VROCQUE  
L/NEA - TMPEAY (INFO)  
TREASURY - LSANTOS (INFO)  
-----095228 150609Z /23

R 141946Z AUG 78  
FM SECSTATE WASHDC  
TO AMEMBASSY LONDON  
INFO AMEMBASSY ABU DHABI  
AMEMBASSY ALGIERS  
AMEMBASSY AMMAN  
USINT BAGHDAD  
AMEMBASSY CAIRO  
AMEMBASSY DOHA  
AMEMBASSY JIDDA  
AMEMBASSY KUWAIT  
AMEMBASSY MANAMA  
AMEMBASSY MUSCAT  
AMEMBASSY RABAT  
AMEMBASSY SANA  
AMEMBASSY TRIPOLI  
AMEMBASSY TUNIS  
AMCONSUL ALEXANDRIA  
AMCONSUL DHAHRAN  
AMEMBASSY ATHENS  
AMEMBASSY TEL AVIV

CONFIDENTIAL

PAGE 02 STATE 205201

C O N F I D E N T I A L STATE 205201

ATHENS FOR RTDO

E.O. 11652: GDS

TAGS: ETRD, UK

SUBJECT: ARAB BOYCOTT: WASHINGTON VISIT OF HMG DEPARTMENT  
OF TRADE REPRESENTATIVES

REF: (A) LON,ON 11916 (NOTAL); (B) STATE 192681 (NOTAL)

1. SUMMARY. WISEMAN AND O'FLYNN ACCOMPANIED BY UK EMBASSY OFFICERS INCLUDING COMMERCIAL MINISTER BRIDGES, SPENT ALMOST SIX HOURS IN THE DEPARTMENT ON AUGUST 8 GOING OVER SPECIFIC POINTS IN THE US ANTI-BOYCOTT REGULATIONS. WE UNDERSTAND THAT THE BRITISH WERE PLEASED WITH THE FORTHCOMING AND THOROUGH NATURE OF THE DISCUSSIONS, ALTHOUGH THEY CONTINUE TO EXPRESS DISAPPOINTMENT THAT THE LEGISLATION PROVIDES SO LITTLE ROOM FOR GREATER FLEXIBILITY IN ITS IMPLEMENTATION. WISEMAN INDICATED ON LEAVING DISCUSSIONS THAT HIS TEAM WOULD NOW HAVE TO COMPILE A REPORT ON ITS FACT-FINDING MISSION AND ASSESS THE FEASIBILITY OF ANY HIGHER LEVEL MEETING. END SUMMARY.

2. LORD BRIDGES OPENED THE SUBSTANTIVE DISCUSSIONS BY STATING THAT:

(A) HMG IS CLEARLY ON RECORD FOR OVER A YEAR IN OPPOSITION TO WHAT IT PERCEIVES AS EXTRATERRITORIAL FEATURES OF THE US ANTI-BOYCOTT LEGISLATION;  
CONFIDENTIAL

PAGE 03 STATE 205201

(B) HMG IS NOT PREPARED TO GO ALONG WITH ANY US REGULATIONS IMPINGING UPON THE SOVEREIGNTY OF THE UK;

(C) A SUBSTANTIAL PROPORTION OF UK MANUFACTURING INDUSTRIES ARE CONNECTED WITH US FIRMS AND MIDDLE EAST MARKET IS OF MAJOR IMPORTANCE TO UK;

(D) US LAWS SUCH AS THE ANTI-BOYCOTT PROVISIONS OF THE EXPORT ADMINISTRATION ACT AMENDMENTS OF 1977 ARE ERODING THE BASIS ON WHICH THE COMPANIES HAVE BEEN OPERATING AS UK COMPANIES, OBEYING UK LAWS;

(E) EVIDENCE IS BEGINNING TO MOUNT OF A NEGATIVE IMPACT VN UK EXPORTS DUE TO THE US ANTI-BOYCOTT LEGISLATION, POSSIBLY INFLECTING "NOTABLE DAMAGE" ON UK EXPORT INTERESTS; AND

(F) HMG IS SEEKING SOLUTIONS AND SOME WAY AROUND THESE DIFFICULTIES WHICH WILL AVOID A COLLISION AND RESPECT UK SOVEREIGNTY.

3. WILLIAM DOZIER, NEA DIRECTOR OF REGIONAL AFFAIRS, RESPONDED WITH A BRIEF STATEMENT STRESSING THAT WE ENCOURAGE US FIRMS AND SUBSIDIARIES OPERATING IN FOREIGN COUNTRIES TO CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS. WHILE WE MUST OF COURSE ADMINISTER THE ANTI-BOYCOTT LEGISLATION, NEITHER THE CONGRESS NOR THE

ADMINISTRATION HAS ANY INTENTION OF INFRINGING ON THE SOVEREIGNTY OF OTHER COUNTRIES. HE CITED THE NEWNESS OF THE LAW AND PARTICULARLY THE REPORTING REQUIREMENTS, WHICH ONLY BECAME EFFECTIVE ON AUGUST 1, AS CONTRIBUTING TO THE UNCERTAINTY AND LACK OF UNDERSTANDING WHICH MEETINGS SUCH AS THIS CAN HELP TO CLEAR UP. HE THEN ASKED VINCENT ROCQUE OF COMMERCE, WHO WAS DEEPLY INVOLVED IN DRAWING UP THE REGULATIONS, ILLUSTRATIVE EXAMPLES AND INTERPRE-  
CONFIDENTIAL

PAGE 04 STATE 205201

TATIONS (AS PUBLISHED IN THE EXPORT ADMINISTRATION BULLETIN SUPPLEMENTS NOS. 174, 179 AND 184), TO GIVE AN OVERVIEW OF BOYCOTT PICTURE AS WE SEE IT.

4. WISEMAN OPENED THE QUESTIONING BY LISTING FIVE GENERAL AREAS OF INTEREST (PARA 2 OF LONDON 11916). IN DOING SO HE REITERATED AND ELABORATED ON POINTS MADE BY BRIDGES, NOTING THAT ONE-IN-TEN MANUFACTURING COMPANIES IN THE UK IS US-CONTROLLED, USING A 51 CRITERION. ACCORDING TO DEPARTMENT OF TRADE CALCULATIONS, US-

CONTROLLED COMPANIES IN THE UK ACCOUNT FOR OVER ONE BILLION DOLLARS OF UK EXPORTS TO THE MIDDLE EAST TOTALLING APPROXIMATELY FIVE BILLION DOLLARS.

5. WISEMAN ALSO NOTED THAT HMG HAS MADE A DECISION NOT REPEAT NOT TO LEGISLATE IN THIS AREA AND DOES NOT REPEAT NOT ACCEPT THE THESIS THAT HMG'S SILENCE IN THIS AREA MAKES US LAW SOMEHOW APPLICABLE OR ACCEPTABLE IN THE UK. IN THIS REGARD, BRIDGES PRESENTED COPIES OF QUOTE MINUTES OF EVIDENCE UNQUOTE PRESENTED ON JANUARY 30, APRIL 5 AND MAY 16 TO THE HOUSE OF LORDS SELECT COMMITTEE ON THE FOREIGN BOYCOTTS BILL. THE MINUTES INCLUDE HMG TESTIMONY ON ITS DECISION NOT TO SEEK LEGISLATION.

6. THERE WAS KEEN QUESTIONING ABOUT THE DEFINITION OF "US PERSONS," AFFILIATES, THE 25 PERCENT PRESUMPTION FOR DETERMINING WHETHER OR NOT US CONTROL EXISTS, ETC. QUESTIONS WERE ANSWERED WITH OUR BEST POSSIBLE INFORMATION. ROCQUE EMPHASIZED IN RESPONSE TO VARIOUS POSTULATED SITUATIONS THAT THE DEFINITION OF WHAT CONSTITUTES A US SUBSIDIARY (AND THEREFORE A "US PERSON" UNDER THE TERMS OF THESE REGULATIONS) IS STATED IN TERMS OF WHETHER  
CONFIDENTIAL

PAGE 05 STATE 205201

THE SUBSIDIARY IS "CONTROLLED IN FACT," AS OPPOSED TO WHETHER IT IS CONTROLLED IN APPEARANCE, AND CITED SECTION 369.1(C) 1. RELATED TO THIS POINT IS THE FACT THAT ANY PRESUMPTION RESPECTING US SUBSIDIARIES IS REBUTTABLE BASED ON FACTS. O'FLYNN NOTED THAT HMG IS SATISFIED WITH

THIS CHANGE FROM THE PROPOSED REGULATIONS, WHICH HAD MADE PROVISIONS FOR NON-REBUTTABLE PRESUMPTIONS.

7. WITH RESPECT TO BRITISH-MANAGED COMPANIES WITH US PARTICIPATION IN THE 25 PERCENT TO 50 PERCENT RANGE, BRIDGES DESCRIBED THE 25 PERCENT GUIDELINE IN THE EXPORT ADMINISTRATION REGULATIONS AS QUOTE ONE OF THE FEATURES WHICH I FIND MOST OBJECTIONABLE. THIS IS ONE OF THE FEATURES WHICH WILL CAUSE YOU A LOT OF DIFFICULTIES... I DO HOPE THAT WHEN THE OPPORTUNITY TO ALTER THE REGULATIONS COMES AROUND THAT SOMETHING CAN BE DONE ABOUT THIS UNQUOTE.

8. BRIDGES ASKED WHAT THE PROCEDURE WOULD BE FOR REBUTTING A PRESUMPTION AND WHETHER OFFICIAL REPRESENTATIONS, E.G., BY THE EMBASSY, WOULD BE NECESSARY. ROCQUE REPLIED THAT COMMERCE IS PROCEEDING IN AN INFORMAL MANNER AND IS ALWAYS READY TO DISCUSS THE FACTS OF A PARTICULAR CASE WITH THE PARTIES OR THE EMBASSY. IF THE QUESTION OF CONTROL-IN-FACT WERE TO ARISE IN CONNECTION WITH AN ENFORCEMENT ACTION OR LITIGATION, DEPOSITIONS WOULD OF COURSE BE INVOLVED. COMMERCE IS AVOIDING PRIVATE LETTER

RULINGS IN FAVOR OF PUBLISHED INTERPRETATIONS WITH RESPECT TO IMPORTANT ISSUES OF GENERAL INTEREST CONCERNING THE REGULATIONS. BRIDGES ASKED ABOUT A FIRM WHICH MIGHT DISAGREE WITH A COMMERCE DETERMINATION ON THE "CONTROLLED-IN-FACT" ISSUE. COULD THIS BE CONTESTED IN COURT? ROCQUE REPLIED THAT HE FELT THERE MIGHT BE LITIGATION IN A US DISTRICT COURT.

CONFIDENTIAL

PAGE 06 STATE 205201

9. WITH REGARD TO TRANSACTIONS QUOTE IN US COMMERCE UNQUOTE, DISCUSSION WAS GENERALLY FOCUSED ON THE MADE-IN-USA VS MADE-IN-THE-UK PORTION OF THE PRODUCT. ROCQUE EXPLAINED, HOWEVER, THAT COMMERCE HAD CONSIDERED AND REJECTED A QUOTE DE MINIMIS TEST UNQUOTE. IN RESPONSE TO A QUESTION, HE ALSO EXPLAINED THE CONCEPT OF UNILATERAL SELF SELECTION BY THE BUYER.

10. REGARDING REPORTING REQUIREMENTS AND SURVEYS, WISEMAN NOTED THAT THE CRIMINAL PENALTIES FOR FAILURE TO REPORT PROVIDED QUOTE AN INCENTIVE FOR NOT REFUSING TO COMPLY UNQUOTE. (COMMENT: THIS CONCERN APPEARS TO BE RELATED TO SUGGESTIONS, REPORTED IN LONDON 11507, THAT HMG COULD ISSUE A REGULATION ORDERING BRITISH FIRMS NOT TO COMPLY WITH THE REPORTING REGULATIONS. END COMMENT) USING EXAMPLES 26 AND 27 FROM PAGE 56 OF EAB 184, DATED JULY 12, ROCQUE CLARIFIED REPORTING OBLIGATIONS IN CONNECTION WITH REPORTABLE REQUESTS WHILE NEGOTIATIONS ARE STILL GOING ON. HE ALSO DESCRIBED THE NEW REPORTING

FORMS AND THE EXTENT TO WHICH INFORMATION COULD OR COULD NOT BE OBTAINED UNDER FREEDOM OF INFORMATION ACT PROCEDURES.

11. ROCQUE NOTED THAT US PARENTS OR OTHER DESIGNATED OR AUTHORIZED PARTIES MAY REPORT ON BEHALF OF THEIR SUBSIDIARIES ABROAD. (COMMENT: THIS WOULD APPEAR TO SATISFY THE BRITISH ON THE POINT RAISED IN PARA 3 OF LONDON 11507. END COMMENT) ROCQUE ALSO STRESSED THAT, WHILE DETAILS OF THE SURVEY PROCEDURES ARE YET TO BE WORKED OUT, PARTICIPATION IN THE SURVEYS WILL BE WHOLLY VOLUNTARY, NOT MANDATORY. WISEMAN REQUESTED THAT INTERESTED FOREIGN GOVERNMENTS BE CONSULTED BEFORE SUCH A SURVEY IS CONDUCTED.

CONFIDENTIAL

PAGE 07 STATE 205201

12. IN RESPONSE TO QUESTIONS ABOUT ENFORCEMENT, ROCQUE SAID THAT US ATTORNEYS UNDER THE DEPARTMENT OF JUSTICE WOULD BE INVOLVED IN ANY CRIMINAL PROCEEDINGS AND THAT THE LAW MAKES NO PROVISION FOR PRIVATE RIGHT OF ACTION.

13. AT THE BRITISH EMBASSY'S REQUEST WE ALSO ARRANGED FOR LEONARD SANTOS, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF THE TREASURY, TO MAKE A BRIEF PRESENTATION ON THE

BOYCOTT PROVISIONS (SECTION 999) OF THE INTERNAL REVENUE SERVICE CODE AND TREASURY'S IMPLEMENTING REGULATIONS. HE DESCRIBED THE WAYS IN WHICH THE GUIDELINES ENCOURAGE TAXPAYERS TO REFRAIN FROM ENGAGING IN CERTAIN BOYCOTT-RELATED ACTIVITIES. THIS LAW, HE SAID, ADMITTEDLY HAS EXTRATERRITORIAL FEATURES, BUT TO AVOID THE EXTRATERRITORIAL IMPACT, THE US WOULD HAVE TO REWRITE SOME OF ITS TAX LEGISLATION, ESPECIALLY THE TAX CREDIT AND TAX DEDUCTION PROVISIONS.

14. FOR INFO ADDRESSEES: ABOVE INFORMATION PROVIDED FOR POST BACKGROUND ONLY.  
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## Message Attributes

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**Concepts:** ARABS, TRADE, BOYCOTTS, VISITS  
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**Copy:** SINGLE  
**Draft Date:** 14 aug 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
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**Disposition Remarks:**  
**Document Number:** 1978STATE205201  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** NEA/RA:REDAY:KMS  
**Enclosure:** n/a  
**Executive Order:** 11652 GDS  
**Errors:** n/a  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:**  
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**Previous Handling Restrictions:** n/a  
**Reference:** (A) LON,ON 11916 (NOTAL); (B) STATE 192681 (NOTAL)  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 29 jun 2005  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 1588274  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** ARAB BOYCOTT: WASHINGTON VISIT OF HMG DEPARTMENT OF TRADE REPRESENTATIVES  
**TAGS:** ETRD, UK, US, (WISEMAN, DAVID), (O'FLYNN, NUALA)  
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**Type:** TE  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014